

Remarks

The Restriction Requirement dated 03/09/2007, has been received and reviewed. The Applicant elects Species 2, associated by the Examiner with Figures 6 – 7. The Examiner has determined that claims 1 – 4, 8, 12, 16, and 18 are generic. See page 2, line 17 of the Restriction Requirement. It is submitted that in addition to the claims determined to be generic by the Examiner, claims 5, 9, 10, 13, 14, and 20 should be examined since these claims read on the elected species. With respect to claim 5, figures 6 and 7 show a resilient blade. With respect to claim 9, figures 6 and 7 show a blade of increasing thickness. Paragraph [0038] also describes this feature. With respect to claim 10, paragraph [0038] describes that the rigidity of the blade shown in figures 6 and 7 increases in rigidity. With respect to claim 13, figures 6 and 7 show a blade of less thickness than the handle. With respect to claim 14, figures 6 and 7 show a blade integral with a handle. With respect to claim 20, figures 6 and 7 show a handle that is thicker than and integral with a blade.

Applicants traverse the restriction requirement.

Where inventions as disclosed and claimed are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions such as those covered in MPEP § 806.05 - § 806.05(j). MPEP § 806.04(b). If restriction is improper under either practice, it should not be required. *Id.*

Confirmation of Factors A and B of MPEP § 806.04(b)

In the present matter, the inventions as disclosed and claimed are species under a claimed genus, as confirmed by the Examiner's determination of several generic claims. Thus, item A of MPEP § 806.04(b) is satisfied. In addition, the inventions are also related. Two or more inventions are related (i.e., not independent) if they are disclosed as connected in at least one of design (e.g., structure or method of manufacture), operation (e.g., function or method of use), or effect. MPEP § 802.01. The basis of the restriction is that the inventions are different types of applicator pads having different rigidity and other structural elements. While the design (structure) of the inventions may be different, the operation (function) and effect connect the inventions together. All of the embodiments of the invention are, to use the Examiner's term, "applicator pads" that apply paint or stain. Therefore, the embodiments of the invention are connected in operation and effect and item B of MPEP § 806.04(b) is satisfied.

Propriety of Restriction Requirement

Since both elements A and B are satisfied, the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other

types of restrictions such as those covered in MPEP § 806.05 - § 806.05(j). MPEP § 806.04(b) If restriction is improper under either practice, it should not be required. Id.

Under the practice applicable to restrictions covered in MPEP § 806.05 - § 806.05(j), where two or more related inventions are claimed, the principal question to be determined in connection with a requirement to restrict . . . is whether or not the inventions as claimed are distinct. MPEP § 806.05. If they are distinct, restriction may be proper. Id. If they are not distinct, restriction is never proper. Id. (emphasis added).

MPEP § 806.05(j) is the most applicable sub-section of the restrictions covered in MPEP § 806.05 - § 806.05(j). Under MPEP § 806.05(j), to support a requirement for restriction between two or more related product inventions, both two-way distinctness *and reasons for insisting on restriction are necessary*, i.e., separate classification, status in the art, or field of search.

The present Restriction Requirement fails for a lack of reasons for insisting on restriction are necessary, i.e., separate classification, status in the art, or field of search. The Examiner has not demonstrated that the various embodiments of the invention are classified separately, have different statuses in the art, or fall in different fields of search. The mere fact that the various embodiments of the invention have different structural features does not suffice to render a restriction requirement proper.

Conclusion

The various embodiments of the invention are disclosed and claimed as species under a claimed genus. In addition, the various embodiments of the invention are related in operation and effect. As a result, a restriction requirement among the various embodiments must be proper under the practice applicable to restrictions covered by MPEP § 806.05 - § 806.05(j). The current restriction requirement is improper under MPEP § 806.05(j) for a lack of reasons for insisting on restriction are necessary, i.e., separate classification, status in the art, or field of search. Withdrawal of the restriction requirement is requested and examination of all the claims in the first substantive examination of the application is requested.

Respectfully submitted,

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